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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20054

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In Re:

Amendment of Section 73.202(b)  
Table of FM Allotments  
Willows and Dunnigan, CA

)  
)  
) MM Docket 94-29  
)  
)  
)

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To: John Karousos  
Chief, Allocations Branch

OPPOSITION TO PETITION FOR RECONSIDERATION

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### Summary of Argument

The Petition for Reconsideration filed by Marysville Radio, Inc. et al. on November 24, 1995 should be dismissed. Not only was the Petition filed in incomplete form, it was not timely served on PSN or its counsel, in direct violation of Section 1.420(f) of the FCC's Rules. Marysville essentially conceded the fatal "incompleteness" of its November 24th filing when, on November 30, 1995, it filed an entire new Petition for Reconsideration deemed to be a "Corrected" Petition. Yet, because Marysville's November 30, 1995 Petition for Reconsideration was filed six days after the deadline for such petitions and because no timely request for waiver of the rules or other "good cause" showing for the late-filed Petition was made by Marysville, the November 30th Petition for Reconsideration -- although filed in a complete form -- is fatally untimely and must be REJECTED.

In the alternative, should Marysville's "incomplete" November 24, 1995 Petition for Reconsideration be accepted for filing by the FCC, it should be summarily denied. Neither the Petition's reassertion of arguments made below nor its two allegedly "new" arguments are meritorious. Dunnigan, which is plainly a "community" for allotment purposes, has a stronger "public interest" need for a first local service than Willows's need to maintain a second local service. Moreover, a grant of the reallocation to Dunnigan -- the only means whereby PSN's Class A facility can be upgraded -- would not constitute a disfavored urban "move-

in" to Yuba City, Davis or Sacramento, each of which is more than 40 kilometers from Dunnigan.

In sum, the flawed Petition -- which raises no new issues that require reconsideration of the FCC's Decision -- should be dismissed on procedural grounds or denied.

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To: John Karousos  
Chief, Allocations Branch

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Pacific Spanish Network, Inc. ("PSN") hereby submits this Opposition to the "Petition for Reconsideration," which was filed in an "incomplete" form -- and not properly served -- on Friday, November 24, 1995 by Marysville Radio, Inc. & Roseville Radio, Inc. (hereafter "Marysville").<sup>1/</sup> A "Corrected" Petition for Reconsideration was filed on November 30, 1995, six days after the 30-day deadline, established by Section 1.429(d) of the FCC's Rules, for seeking reconsideration of a rule making order.

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<sup>1/</sup> Notwithstanding Marysville's "Certificate of Service," PSN's counsel was not served by mail on November 24, 1995, with a copy of the Petition.

A copy of the Petition was obtained by messenger service from Marysville's counsel on November 29, 1995, only upon specific request therefor from PSN's counsel (who had observed that another party had served its November 24, 1995 "Application for Review" on Marysville's counsel.)

Moreover, the "November 24th" Petition contained a blank "Exhibit 1" and the Petition's transmittal letter expressly stated that it would be "forthcoming."

On November 30, 1995 -- six days following the date on which the Petition was due under FCC rules -- Marysville filed a Corrected Petition, the mailed copy of which was received by PSN's counsel on Monday, December 4, 1995.

Petitioner seeks to reverse the FCC's decision in Report & Order, MM Docket 94-29, released October 24, 1995 (hereafter "Decision"), which (i) granted PSN's 1993 Petition for Rule Making (ii) amended the FM Table to reallocate channel 288 from Willows to Dunnigan, CA and (iii) modified KQSC(FM)'s license to specify operation on the upgraded channel at Dunnigan, CA. <sup>2/</sup> Petitioner, who perceives competition from PSN's Dunnigan station, operates one AM and two FM radio stations in an adjoining county.

#### Background

In response to a 1993 Petition for Rulemaking by PSN's predecessor, <sup>3/</sup> the FCC issued a Notice of Proposed Rulemaking, 9 FCC Rcd 1802 (1994), proposing to amend the FM Table to substitute channel 288B1 for channel 288A at Willows, CA, to reallocate the channel as a "first local service" at Dunnigan, CA and to modify KQSC's license accordingly.

Supporting comments were filed by PSN and also by an FM permittee, Michael Robert Birdsill. <sup>4/</sup> Five parties filed oppos-

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<sup>2/</sup> On November 24, 1995, Secret Communications, Inc. filed an Application for Review of the Decision. Under the FCC's rules, that pleading will be held in abeyance pending the disposition of the Petition for Reconsideration. See Section 1.104(c) of the Rules.

<sup>3/</sup> The prior call sign was KIQS (FM).

<sup>4/</sup> Birdsill argued that a grant of PSN's proposal would serve the public interest because the deletion of channel 288A at Willows would be the only means whereby he could upgrade his permit for KCFM(FM), Shingletown, CA.

ing comments, including Marysville's predecessors-in-interest. <sup>5/</sup>

Following a lengthy review of the comments, a detailed explication of the opposing arguments and a thorough review of relevant precedent, <sup>6/</sup> the Decision granted PSN's Petition. It sustained the staff's prior determination that Dunnigan is a "community" for allotment purposes. Id. at paragraphs 4-9. The Decision also concluded that the provision of a "first local service" to Dunnigan, CA was of greater public interest weight [priority three] than retention of Willows' "first local nighttime service" [priority four] under the FCC's FM allotment priorities. Id. at paragraphs 10-16. The Decision extensively addressed allegations that disruption of service at Willows would outweigh other positive gains. Id. at para. 12. The Decision rejected assertions that the proposal seeks merely to move KQSC from an underserved rural area into a suburb of an overserved urban area, noting that the move is the only means whereby KQSC can be upgraded, that most of the gain area from the move would be "rural" and that Dunnigan is neither in nor adjacent to Sacramento or any other urbanized area. Id. at paragraphs 13-16.

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<sup>5/</sup> It appears that Marysville had already agreed to buy its three northern California stations at the time that its predecessors-in-interests filed opposing comments in this proceeding; thus, it is likely that Marysville was aware of this proceeding at that time. Yet, Marysville appears to have concluded not to file any comments at that time. See note 29, infra.

<sup>6/</sup> See Decision at paragraphs 4-16.

## **ARGUMENT**

### **I. MARYSVILLE'S PETITION SHOULD BE DISMISSED**

A concededly "incomplete" Petition for Reconsideration was filed by Marysville on November 24, 1995 -- the last day for timely filed petitions seeking reconsideration of the FCC's October 24, 1995 Decision. <sup>7/</sup> The "incomplete" Petition lacked any Exhibit 1, despite references in the text of the Petition to such an Exhibit. <sup>8/</sup> The "incomplete" Petition contained other irregularities. <sup>9/</sup> A "Corrected" Petition for Reconsideration was filed by Marysville on November 30, 1995 -- six days after the deadline established by Section 1.429(d) of the Rules for filing petitions "and any supplement thereto". Neither the "Corrected" Petition for Reconsideration nor its transmittal letter contained either (i) a request for a waiver of the rules or (ii) a request for "leave" to late-file -- much less was any basis stated for granting leave to late-file or for a waiver. <sup>10/</sup> See Section 1.429(d) of the Rules.

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<sup>7/</sup> The 30th day following October 24, 1995, fell on Thanksgiving Day, November 23, 1995.

<sup>8/</sup> Indeed, Marysville's transmittal letter for the Petition stated expressly that "exhibit 1 to the petition will be forthcoming under separate cover."

<sup>9/</sup> For example, the cover page was untitled, there were numerous typographical errors and there were factual miscitations to both the Report & Order (e.g., page 4) and the FCC's rules (e.g., note 1).

<sup>10/</sup> PSN assumes that Marysville will not attempt to improperly present a "waiver request" in any Reply that may be filed to this Opposition.



Accordingly, the untimely "Corrected" Petition for Reconsideration should be rejected and the "incomplete" Petition for Reconsideration should be dismissed. <sup>11/</sup>

Moreover, there is a second basis on which the "incomplete" Petition, filed on November 24, 1995, should be dismissed. In direct violation of the FCC's rules, the "incomplete" Petition was not timely served on PSN or its counsel. See Section 1.420-(f) of the Rules. Although the "incomplete" Petition for Reconsideration contained a Certificate of Service that "recited" service by mail on November 24, 1995, to PSN's counsel, such a mailing was never received by PSN's counsel. Rather, PSN's counsel discovered through reading another party's pleading that Marysville had apparently filed and, ultimately, PSN received a messengered copy of the November 24, 1995 "incomplete" Petition on November 29, 1995, after its counsel contacted Marysville's counsel by phone. Marysville's "incomplete" Petition should be dismissed for violation of the FCC's service rules. See Section 1.420(f).

**II. ALTERNATIVELY, THE PETITION SHOULD BE SUMMARILY DENIED**

Even assuming arguendo that the "incomplete" Petition is not dismissed, it lacks merit and, alternatively, should be denied.

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<sup>11/</sup> Even if the "incomplete" Petition is not dismissed, the FCC is precluded from considering any of the matters relating to Exhibit 1, which was not timely submitted.

Marysville raises three issues in assailing the FCC's October 24, 1995 Decision.<sup>12/</sup> Each issue was thoroughly discussed in the FCC's Decision, which properly resolved the issues below. In short, Marysville obscures the facts and misstates the FCC's precedents in a desperate attempt merely to thwart perceived competition from KQSC in its radio stations' service area.<sup>13/</sup>

**A. Dunnigan Is a "Community" for Allotment Purposes**

Marysville obliquely argues that the FCC erred in concluding that Dunnigan is a "community" for FM allotment purposes. See Petition at 14; 16-18. Although Marysville never directly asserts that Dunnigan does not qualify as a "community" under FCC precedent, it repeatedly infers such.

**1. Dunnigan's qualification as a "community"**

First, Marysville terms Dunnigan as "tiny" (id. at 14) and reasserts certain "facts" about Dunnigan (id. at 17), most of which were raised (and fully considered by the FCC) below.<sup>14/</sup>

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<sup>12/</sup> In contrast, the November 24, 1995 Application for Review argues only that the Decision erred in allegedly failing to give "any weight" to the alleged harm to Willows from the reallocation of its only local nighttime aural service.

<sup>13/</sup> While KQSC's Dunnigan facility would serve the Yuba City Urbanized Area (including Marysville, CA), those 77,000 persons will constitute less than 40% of the persons receiving service within the station's 1.0 mV/m contour.

<sup>14/</sup> See Decision at paragraphs 5-9.

Some of these "facts" actually support Dunnigan's need for a first local radio service. <sup>15/</sup> Certain of Marysville's assertions are factually erroneous. <sup>16/</sup> Other stated "facts" are simply not determinative of Dunnigan's qualification as a "community" for allotment purposes. <sup>17/</sup> Finally, one of Marysville's asserted "facts" is blatantly unsupported and, in fact, unsupportable. <sup>18/</sup>

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<sup>15/</sup> For example, Marysville complains that Dunnigan has no local media. See Petition at 17 (item "b").

<sup>16/</sup> Contrary to Marysville's claims (Petition at 17), PSN's June 21, 1994 Reply Comments did not "concede" [at note 28] that Dunnigan was "part of the Sacramento ADI" but merely referenced a claim contained in Exhibit B to comments filed by KZSA. In any event, whether Dunnigan is within the Sacramento ADI is not determinative. See Bay St. Louis, MS, DA 95-2384, released December 6, 1995, at para. 8. Moreover, the Sacramento ADI stretches from Plumas County (north of Chico, CA) to Stanislaw County (south of San Jose). See Broadcasting & Cable Yearbook 1994, at C-182. Yet, no rational person would argue that a proposal to move a radio station to either a town north of Chico, CA or a town south of San Jose, CA -- although both towns would lie within the Sacramento ADI -- is an attempted "move-in" to Sacramento, which is located hundreds of miles away from each.

<sup>17/</sup> Indeed, Marysville cites no FCC precedent to support its unstated "implication" that Dunnigan's lack of local government, lack of a separate "Dunnigan" phone book and Dunnigan's "limited commercial establishments, health facilities and transportation systems" should be determinative of the "community" status question. See Petition at 16-8; see also Decision at paragraphs 8-9.

<sup>18/</sup> Marysville asserts (Petition at 18) that Dunnigan "must rely" on the Sacramento, Davis and Yuba City Urbanized Areas for "many vital municipal services, including police, schools, libraries, hospitals and roads." As authority for this incredible factual assertion, Marysville relies on the Affidavit of a secretary from its former law firm in Washington, DC (who alleges simply to have spoken by telephone with a "librarian assistant" at a Woodland, CA county library.) See Petition at Exhibit 4. First, the secretary's Affidavit -- on its face -- establishes ONLY that Dunnigan does not itself provide certain services (such as schools, library or local transportation), not that any of

(continued...)

In contrast to Marysville's flawed assertions, supra, the Decision meticulously analyzes the opposing commenters' arguments, thoroughly evaluates all of the evidence, weighs the evidence in terms of proper FCC standards and precedent and then properly concludes that Dunnigan qualifies as a "community" for allotment purposes. For example, the Decision cited the following "facts" as evidence establishing that Dunnigan is a "geographically identifiable population grouping" (id. at paragraphs 4, 6-9):

- a) Dunnigan has 700 residents and identifiable boundaries;
- b) Dunnigan has its own water and fire protection districts, its own zip code, its own post office and a town hall; and a first-alert medical service;
- c) Dunnigan has its own churches, businesses, a residential care facility, a golf course and civic clubs;
- d) Dunnigan has a comprehensive General Plan for future growth.
- e) The phone book relied on by opponents lists Dunnigan as a distinct community;
- f) The 1995 Rand McNally Commercial Atlas and Marketing Guide specifically lists Dunnigan.

Moreover, the Decision properly notes not only that the test for determining "community" status is "not a stringent one," <sup>19/</sup> but also that a proponent need establish only "that the residents of the locality are commonly regarded as a distinct group." <sup>20/</sup> In this case, PSN met and exceeded that test by both (i) the

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<sup>18/</sup>(...continued)  
Sacramento, Davis or Yuba City. In any event, the record discloses -- as Marysville's predecessor even commented -- that none of those particular services are provided by any of those three cities (Dunnigan children go to school in Arbuckle, the library is at Woodland, etc). See Comments of River Cities Radio, LP, filed June 4, 1994, at 2; see also Exhibit B to the Petition for Rulemaking, filed December 22, 1993.

<sup>19/</sup> See Decision at paragraph 9 (and cases cited).

<sup>20/</sup> Id. at paragraph 7.

separate testimonies of a local official, an associate county planner and the Chairman of the Dunnigan Community Advisory Council <sup>21/</sup> and (ii) "objective indications" of the existence of a distinct geographic population grouping. <sup>22/</sup> See Beacon Broadcasting, 2 FCC Rcd 3469, aff'd, 2 FCC Rcd 7562 (1987) (proponent of community must show either of those two elements).

## 2. Dunnigan "deserves" the FM allotment

Marysville, appearing to recognize that Dunnigan meets the FCC's test for "community" status, alternatively argues that Dunnigan does not deserve community status because of its alleged "dependence" on the "nearby" urban areas of Yuba City, Davis and Sacramento. This argument is palpably false.

First, as the Decision correctly notes, <sup>23/</sup> Dunnigan is not on the fringe of and is not even "nearby" to either Yuba City,

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<sup>21/</sup> These testimonies, from disinterested local citizens and county officials, clearly establishes Dunnigan's status as a distinct geographical grouping. See Appendix G to PSN's June 21, 1994 Reply Comments (county supervisor testifies that the residents of Dunnigan consider their town as geographically distinct and a "long established" community); Appendix L to PSN's June 21, 1994 Reply Comments (fifth generation Dunnigan real estate developer testifies about expected growth in Dunnigan, which he and other local families consider as distinct "community"); Appendix M to PSN's June 21, 1994 Reply Comments (same).

<sup>22/</sup> The fact that numerous of the businesses and other local organizations have "Dunnigan" in their name indicates the existence of a distinct geographical population grouping.

<sup>23/</sup> See Decision at paragraph 8 (not on the fringe of an urban area).

Davis, or Sacramento. <sup>24/</sup> In fact, Marysville's own Exhibit recognizes that the Dunnigan FM facility would place a 1.0 mV/m contour over Yuba City, to the northeast, but not over Davis and not over Sacramento, both to the southeast. See Petition at Exhibit 2, Figure 1. In any event, whether a proposed community is within an Urbanized Area is not determinative. Compare Bay St. Louis, supra (FCC concludes that a community is "separate" even though it lies within an Urbanized Area). <sup>25/</sup>

Second, Dunnigan is not "dependent" on either Yuba City, Davis or Sacramento. There is absolutely NO probative evidence for this assertion. And, while Marysville relies on a solitary speculative statement contained in the Dunnigan Master Plan, concerning likely commuting patterns of future Dunnigan residents, it is sufficient to note that the only record evidence is manifestly to the contrary -- Dunnigan residents are likely to be employed locally. <sup>26/</sup> Finally, PSN has demonstrated, supra, that Marysville's assertion regarding Dunnigan's "dependence" on Yuba

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<sup>24/</sup> Marysville concedes (Petition at 14) that Sacramento is more than 40 miles from Dunnigan. Yuba City is more than 40 kilometers from Dunnigan and Davis is more than 40 kilometers from Dunnigan. See Appendix A (Engineering Statement).

<sup>25/</sup> Reliance by Marysville in this case on one of the RKO comparative renewal cases -- where Richmond, CA, was found to be "interdependent" with its nearby, Bay-Area cities of Oakland and San Francisco -- is laughable. See Petition at 12-13.

<sup>26/</sup> See Appendix L to PSN's Reply Comments, supra (an industrial park and a commercial center are being developed for Dunnigan that would employ 150-250 residents; two agricultural companies are planning Dunnigan locations to employ 75-200); Appendix M, supra (development of a separate 50-acre commercial project in Dunnigan and other "industrial and residential projects").

City, Davis or Sacramento for municipal services is recklessly false. <sup>27/</sup> See Bay St. Louis and Poplarville, MS, supra

**B. The Dunnigan Facility Is Not an Urban "Move-In"**

Marysville argues that two "new" facts require the FCC's reconsideration as to whether the Dunnigan facility would constitute a disfavored rural-to-urban reallocation, under New Community of License, 5 FCC Rcd 7094 (1990). See Petition at 15-16.

First, neither of the proffered "new facts" are even remotely "new." <sup>28/</sup> Marysville has failed to carry its burden under Section 1.429(b) of the Rules to show why these "old" facts could not have been presented below. <sup>29/</sup> In any event, neither of these "new facts" requires reconsideration of the FCC's Decision.

**1. The "New" Engineering Study**

Marysville's "new" engineering study is neither "new" nor newsworthy. Even Marysville concedes that the projected 1.0 mV/m contour of the proposed Dunnigan facility would cover Yuba City

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<sup>27/</sup> See note 18, supra.

<sup>28/</sup> The engineering study is "new" only to the extent that Marysville belatedly authorized its engineering consultant only recently to prepare it. The translator application was filed in April of 1994.

<sup>29/</sup> Marysville is charged with having constructive notice in 1994 regarding the translator application. Indeed, Marysville filed an application in 1994 to acquire stations KMYC and KRFD from River Cities Radio, LP, -- one of the parties that filed comments opposing the Dunnigan rulemaking on June 4, 1994. Marysville clearly was an interested party at that time and it or River Cities Radio LP should have raised this matter at that time.

but not Davis and not Sacramento. See Petition for Reconsideration at Figure 1 to Exhibit 2.

Marysville's "new" study asserts that the 1.0 mV/m contour (60 dBu contour) would also extend to the entire Davis Urbanized Area "if" one uses a "ECAC Terrain-Integrated Rough Earth Model (TIREM)" propagation methodology. The short answer is, such methodology has never been acceptable for allotment purposes. See Section 73.313(c) of the Rules; see also Engineering Statement, attached hereto at Appendix A. Indeed, Marysville's very reliance on this unacceptable methodology is disingenuous at best. <sup>30/</sup>

In sum, the Dunnigan facility's 1.0 mV/m contour, as properly measured for allotment purposes, does not extend to either Davis or Sacramento. See Petition at Exhibit 2, Figure 1. <sup>31/</sup>

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<sup>30/</sup> Marysville (mis)cites to 47 CFR 313(i) and (j). See Petition at note 1. In fact, the pertinent rule sections contain a note that expressly states that their "effectiveness" has been stayed by the FCC since May 19, 1977. See 47 CFR 73.313 (i) (j) [notation following].

<sup>31/</sup> And, even assuming arguendo that the 1.0 mV/m contour did extend over Davis, Dunnigan is not interdependent with either Davis or Yuba City. See note 18, supra; see also Bay St. Louis, supra.



## 2. The Translator Application

Likewise, the April 15, 1994 translator application filed by Brett Miller is neither "new" information nor is it newsworthy in this allotment proceeding. <sup>32/</sup>

It must be observed at the outset that Marysville's argument with respect to the translator is opaque at best. It consists entirely of the following three sentences: "The foregoing analysis is reinforced by the translator proposed by Brett Miller, the media broker who facilitated the assignment to PSN. See Exhibit 3 annexed hereto. Miller's proposed translator would retransmit the Station's signal to approximately 225,000 more people in the Sacramento Urbanized Area." Petition at 15.

First, it is unclear what "foregoing analysis" is being "reinforced" by the translator. If Marysville is arguing that PSN will be able to extend its reach into Sacramento via Miller's translator, a gigantic evidentiary lacuna results. Miller is not contractually bound to do so, he received written permission in September 1994 to carry another northern California FM station on the translator and, in any event, a primary focus for Miller is on the translator's subcarrier.

Mr. Miller is not merely a media broker who happens to have handled the Willows FM transaction for seller KIQS, Inc. and buyer PSN; he is a broadcaster and media consultant with numerous

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<sup>32/</sup> Marysville's Petition failed to carry its burden of showing why this allegedly "new" information could not have been timely presented below. See 47 CFR 1.429(b).

broadcast interests that are wholly unrelated to PSN or its owners. See Appendix B. Mr. Miller alone, not PSN, is the owner of the translator application. Id. He filed the application after being alerted to the opportunity by his friend and longtime advisor, consulting engineer Lawrence Morton. Id.

Moreover, in September 1994, Miller obtained written permission from another northern California broadcaster to carry station KNGT's programming on the translator. Id. at Attachment 1. Mr. Miller may ultimately carry KQSC's signal on his primary channel or he may carry KNGT (FM), depending on extant business considerations at the time that he receives a permit. Id. In fact, one of the parties who has appealed the Decision has contacted Mr. Miller to "pressure" him to carry a Woodland, CA station on the translator. Id. Furthermore, Mr. Miller's plans for the translator are particularly focused on the translator's subcarrier, for which he intends to use for RBDS-based messaging. Id. That was a motivating purpose behind his filing for the translator in the first place. Id.

In sum, Mr. Miller's contested translator application has been pending at the FCC for almost two years and is wholly unrelated to the merits of this allotment proceeding.

#### C. Willows Has Access to Nighttime Aural Services

Finally, Marysville argues tentatively that the Decision errs in failing to determine whether the nighttime distant aural

services that would be received by Willows after the reallocation of the FM station to Dunnigan is "responsive" to the needs of Willows. Petition at 18-19. This lightweight argument is easily dispatched.

The Decision properly concluded that, after the reallocation, Willows (actually, the entire "loss area") will continue to receive at least nine aural services (excluding the Willows daytimer) and 76 percent of the population in the "loss area" would continue to receive eleven (11) aural services.<sup>33/</sup> The question of whether the nine or eleven distant aural services are "responsive" in their programming to the needs of Willows is no more relevant in this allocation proceeding than whether the existing Willows FM station is "responsive" to the needs of Willows. Indeed, the FCC properly weighed the "loss" to Willows against the "gain" to Dunnigan and concluded, consistent with FCC precedent, that a first local service to Dunnigan (and the gain of a seventh aural service to 477 persons, an eighth service to 124 persons and a ninth service to 104 persons in the largely rural service area) outweighed the loss of a local nighttime service to Willows, which was already served by at least nine nighttime aural services.<sup>34/</sup>

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<sup>33/</sup> See Decision at paragraph 11.

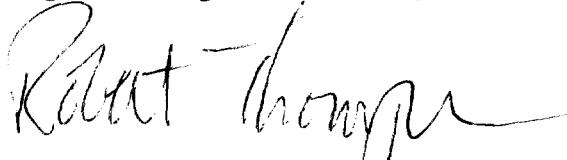
<sup>34/</sup> Moreover, the record establishes that, following the reallocation, station KCFM (FM), Shingletown, CA will likely provide an additional nighttime FM service to Willows. See Comments of Michael Robert Birdsill, filed June 2, 1994, and Reply Comments [of Birdsill], filed June 20, 1994.

In sum, the Decision weighed the loss to Willows of a second local service against the gain of a first local service to Dunningan and concluded that the public interest favors the reallocation.<sup>35/</sup> Cf. Homestead and North Miami Beach, FL, DA 95-2385, released December 6, 1995 at paragraph 6 (change of community granted for "first local service" and where population gain would result, even though FM channel would be downgraded). The Decision's conclusion was not arbitrary or unlawful.

#### CONCLUSION

The "Corrected" Petition for Reconsideration, filed November 30, 1995 should be rejected, the Petition for Reconsideration filed November 24, 1995 should be either dismissed or denied and the FCC's Decision should be affirmed.

Respectfully submitted,



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December 8, 1995

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<sup>35/</sup> The Decision also could have relied on the pending Rule Making proceeding (Docket No. 94-126) to allot FM channel 292A to Willows, which if granted will provide a second local aural service to Willows.

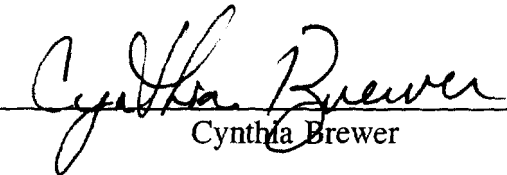
CERTIFICATE OF SERVICE

I, Cynthia Brewer, do certify that on this 8th day of December, 1995, I served copies of the foregoing "Opposition to Petition for Reconsideration" on the following by first class mail:

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## **Appendix 1**

## ENGINEERING STATEMENT

On behalf of Pacific Spanish Network, Inc., licensee of FM broadcast station KQSC(FM), I personally reviewed the *Petition for Reconsideration* in MM Docket No. 94-29, filed November 24, 1995, jointly by Marysville Radio, Inc., and Roseville Radio, Inc.

Submitted as Exhibit 2 to the *Petition* is the engineering statement of Daniel G.P. Mansergh of the firm Hammett & Edison, Inc. As part of his engineering statement, Mr. Mansergh submitted Figures 1, 2 and 3 to demonstrate the extent of hypothetical coverage from the proposed Dunnigan Channel 288B1 allotment for KQSC(FM). Figure 1 correctly represents the 60 dB $\mu$  F(50,50) service contour from a maximum Class B1 facility operating at 25-kW ERP and 100-meter HAAT from the allotment reference site.

Figures 2 and 3 rely upon alternate signal strength predictions, based on the ECAC Terrain-Integrated Rough Earth Model, to show that 60 dB $\mu$  service will extend beyond the 60 dB $\mu$  service contour as predicted by the methods of 47 C.F.R. § 73.313 and the curves of § 73.333 Figure 1. However, it is a well established fact that the Table of Allotments of § 73.202 and the minimum distance separation requirements of § 73.207 are based on service and interference contour distances predicted under § 73.313, and no consideration is given to alternative propagation methods for allotment proceedings. Therefore, the correct representation of KQSC(FM)'s 60 dB $\mu$  service contour from the Class B1 allotment reference site is shown on Figure 1, and no merit can be given to the representations shown on Figures 2 and 3.

Furthermore, references made in Exhibit 2 to the Yuba City Urbanized Area and the Davis Urbanized Area are problematic. First, Figures 2 and 3 to Exhibit 2 lack any precise definition or geographic boundaries of the Yuba City or Davis Urbanized Areas. Moreover, as Figure 1 itself shows, Pacific Spanish Network's proposed Dunnigan facility would not place a 1.0 mV/m signal over any part of the Davis Urbanized Area. Second, the proposed Dunnigan facility's 1.0 mV/m service to Yuba City [1990 Census population of 77,167] is clearly incidental to its overall service to more than 160,000 persons in its 4,754-square-kilometer service area. Additionally, Dunnigan is neither a suburb of nor adjacent to either the Davis or the Yuba City Urbanized Areas. In fact, Dunnigan is approximately 41.8 kilometers from Davis and 40.9 kilometers from Yuba City. And finally, Figure 1 shows clearly and accurately that no portion of the KQSC(FM) Channel 288B1 60 dB $\mu$  F(50,50) service contour from Dunnigan overlaps any part of the Sacramento Urbanized Area.

**Lawrence L. Morton, P.E.**  
**Consulting Engineer to Pacific Spanish Network, Inc.**  
**December 4, 1995**

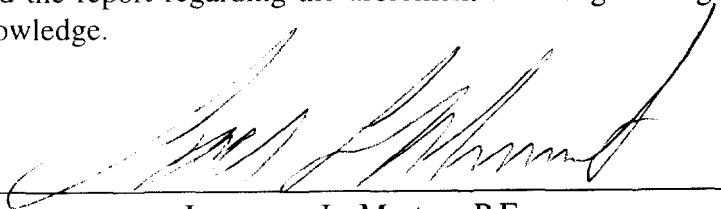
## AFFIDAVIT

State of California                    )  
  ) ss:  
County of Orange                    )

Lawrence L. Morton, being first duly sworn upon oath, deposes and says:

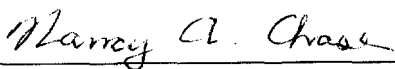
- That he is a qualified engineer,
- That he is a Registered Professional Engineer in the State of California,
- That he is a member of the Association of Federal Communications Consulting Engineers,
- That his qualifications are a matter of record with the Federal Communications Commission,
- That he has prepared many broadcast applications and engineering exhibits that have been filed with and granted by the Federal Communications Commission,
- That he has carried out such engineering work and that the results thereof are attached hereto and form part of this affidavit, and
- That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge.

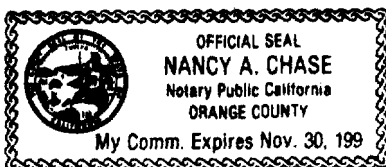
Date: December 4, 1995

  
\_\_\_\_\_  
Lawrence L. Morton, P.E.

On December 4, 1995, before me, Nancy A. Chase, a Notary Public, in and for the State of California, personally appeared Lawrence L. Morton known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

My Commission expires 11/30/96

  
\_\_\_\_\_  
Notary Public





## ENGINEERING STATEMENT

On behalf of Pacific Spanish Network, Inc., licensee of FM broadcast station KQSC(FM), I personally reviewed the *Petition for Reconsideration* in MM Docket No. 94-29, filed November 24, 1995, jointly by Marysville Radio, Inc., and Roseville Radio, Inc.

Submitted as Exhibit 2 to the *Petition* is the engineering statement of Daniel G.P. Mansergh of the firm Hammett & Edison, Inc. As part of his engineering statement, Mr. Mansergh submitted Figures 1, 2 and 3 to demonstrate the extent of hypothetical coverage from the proposed Dunnigan Channel 288B1 allotment for KQSC(FM). Figure 1 correctly represents the 60 dB $\mu$  F(50,50) service contour from a maximum Class B1 facility operating at 25-kW ERP and 100-meter HAAT from the allotment reference site.

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**Lawrence L. Morton, P.E.**  
**Consulting Engineer to Pacific Spanish Network, Inc.**  
**December 4, 1995**